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No. 71-925

In the Supreme Court of the United States

OCTOBER TERM, 1971

TERMINAL FREIGHT COOPERATIVE ASSOCIATION, ET AL., PETITIONERS

v.

JOSEPH H. SOLIEN, REGIONAL DIRECTOR OF THE FOURTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENT SOLIEN IN OPPOSITION

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OPINIONS BELOW

Neither the court of appeals nor the district court rendered any opinion.

JURISDICTION

The order of the court of appeals was entered on December 17, 1971 (Pet. App. 148). The petition

for a writ of certiorari was filed on January 14, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

In a prior proceeding, the district court ruled that petitioners were not parties to an injunction suit brought by the Board's Regional Director under Section 10(l) of the National Labor Relations Act to enjoin certain allegedly illegal picketing; the court also approved, over petitioners' objections, a stipulation (in lieu of an injunction) under which the union agreed to stop the picketing pending the Board's administrative proceeding. Petitioners appealed the order denying them party status (which was affirmed by the court of appeals), but did not appeal the order approving the stipulation. The question presented is whether the district court properly denied petitioners' request, made some 14 months after the original orders, to reopen the stipulation and reconsider their objections thereto.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at Pet. App. 149-150.

STATEMENT

This case *(Solien IV)* is a further stage in the effort by Terminal and Sears, who filed unfair labor practice charges with respondent, the Board's Re-

gional Director, to upset a stipulation and settlement which respondent entered into with respect to those charges. The history of this controversy is more fully described in Respondent's Brief in Opposition in No. 71-924 *(Solien III)*. The portion of that history relevant to this case is as follows:

Respondent Regional Director, after determining that a complaint should issue upon the secondary boycott charges which Terminal and Sears had filed against Drivers Union Local 610 (the "Union"), petitioned the district court, pursuant to Section 10 (l) of the Act (29 U.S.C. 160(1)), for an injunction against the Union's picketing activity pending a final adjudication by the Board. Terminal and Sears moved to intervene in the 10(l) proceeding as full parties; the Regional Director opposed this motion. Thereafter, the Regional Director and the Union entered into a stipulation providing for a cessation of the Union's alleged unlawful picketing pending a final adjudication of the charges by the Board, and for the entry of a temporary injunction if the stipulation were violated (Pet. App. 15-20).[1]

Terminal and Sears filed objections to the stipulation on the ground, *inter alia*, that it did not permit them to apply for an injunction if the stipulation were violated. However, neither Terminal nor Sears contended that it lacked sufficient information to evaluate the adequacy of the stipulation. (Pet. App. 20-25.) After a hearing on the objections (Pet. App.

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[1] The Union's picketing had actually ceased by this time (Pet. App. 33, 37).

26-39), the district court denied the motions of Terminal and Sears to intervene as parties, and disapproved the proposed stipulation (Pet. App. 39-40). The stipulation was revised the next day, and the district court approved it (Pet. App. 41-42).[2]

Terminal and Sears appealed from the order denying them status as full parties in the proceeding, but did not appeal from the order approving the stipulation. On March 12, 1971, the court of appeals affirmed the former order. *Solien* v. *Miscellaneous Drivers and Helpers Union, Local No. 610*, 440 F. 2d 124 (C.A. 8), certiorari denied, 403 U.S. 905 *(Solien I)*.

On September 13, 1971, some 14 months after the district court had entered the orders detailed above, Terminal filed a motion with the district court to set aside or amend the stipulation which it had previously approved. Terminal renewed its earlier objection that the stipulation should have empowered it to seek an injunction independently of the Regional Director if the stipulation were violated.[3] For the first time, Terminal also asserted that it lacked sufficient information to determine whether the stipulation "constitutes a full and adequate remedy" for the Union's unlawful conduct, and that therefore it should be permitted to depose the Regional Director

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[2] The revised stipulation omitted a provision, contained in the original stipulation, which read (Pet. App. 17): "Nothing contained in this Stipulation shall be construed to make unlawful, where not otherwise unlawful, any primary picketing."

[3] There was no contention that the Union had ever resumed (see n. 1, *supra*) its alleged illegal picketing.

and to examine the Board's files (Pet. App. 43-50). The Regional Director and the Union opposed the motion on the grounds, *inter alia*, that it was untimely and that it was foreclosed by the earlier decision in *Solien I* that Terminal was not a full party in the proceeding (Pet. App. 52-55, 56-59).

The district court denied Terminal's motion (Pet. App. 139). The court of appeals summarily affirmed, ruling that "the questions presented for review by this appeal are so insubstantial as not to need further argument and said appeal is, in fact, frivolous and entirely without merit" (Pet. App. 142-146).

ARGUMENT

The only question presented by this petition is whether the district court exceeded its authority in refusing to entertain Terminal's motion to reopen and reconsider a stipulation which it had approved some 14 months earlier. Such an issue necessarily turns on the particular facts and thus does not warrant review by this Court. Moreover, as the court of appeals concluded in treating Terminal's appeal as frivolous, the district court was fully justified in declining to reconsider the stipulation. The district court had considered and rejected one of Terminal's objections earlier and no valid explanation was offered for the delay in raising the other objection; there was no showing that the Union, in the meantime, had resumed its picketing in violation of the stipulation; and, although Terminal had appealed from the district court's earlier order denying it

party status in the proceeding, it had not appealed from the order approving the stipulation.

As the court of appeals recognized in summarily affirming the district court, there is no merit to Terminal's contention (Pet. 9-14) that the decision in *Solien II*[4] granted to charging parties rights which were denied to them in *Solien I*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NORTON J. COME,
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[4] *Terminal Freight Handling Co.* v. *Solien*, 444 F. 2d 699 (C.A. 8), petition for certiorari pending, No. 71-609.

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